REMARKS

Claims 1-10 and 21-25 are pending and under consideration, claims 11-20 were withdrawn from consideration pursuant to a restriction requirement.

In the Office Action of 12/18/02, all claims were rejected as anticipated or obvious. In response, Claims 1, 24 and 25 have been amended to better state the continuous curve nature of the container sidewall. This amendment is not to be considered an acquiescence in the rejections of the claims.

Attached are marked up versions of each claim amended below.

Rejection Under 35 U.S.C. § 102(b)

Claims 1-6 and 22 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by *Pasquale*(U.S. Patent No. 5,385,250). This rejection is traversed.

The present invention requires a continuous curved sidewall in vertical profile, i.e. a sidewall without a joint. As the drawings make clear, the sidewall is a continuous curve from the lower frustum section through the narrow mid-section to the upper frustum to form the hourglass like shape. In the present invention, the hourglass shape resists paneling and other deformations during a retort process (see specification page 7, lines 12-14). *Pasquale* does not fairly teach or suggest a container with a continuous curve sidewall.

In contrast, *Pasquale* teaches a plastic bottle having an annular groove with a quadrangle cross section. The groove comprises two annular bands connected by an inner cylindrical band (see column 2, lines 17-20 and Figs. 1 and 2). Thus, the groove of *Pasquale* is not a continuous

curve due to a jointed groove. Therefore, the *Pasquale* reference does not anticipate the present invention.

Moreover, the claims require a container that can be used in a retort or hot fill process without permanent deformation. *Pasquale* does not meet this limitation.

Submitted herewith is a declaration of Gregory Fehn who has considerable experience in plastic container design, development and structure. Mr. Fehn sets forth how the *Pasquale* container is unsuitable for retort or hot fill purposes and in any event does not have a sidewall that is a continuous curve in vertical profile, and thus cannot meet at least two limitations set forth in the claims.

Mr. Fehn notes that *Pasquale* teaches a PET plastic bottle that withstands pressure from a carbonated liquid. To withstand the pressure, *Pasquale* teaches a bottle having a thin wall at the label, a necked top and a bottom which will prevent blowing out under pressure.

Pasquale, however, is not designed for a hot fill or retort process. Typical PET bottles such as *Pasquale* are relatively thin and contain residual stress resulting from their forming process. These factors lead to weakness and/or distortion during a hot fill/retort process due to the heat applied to the plastic. Additionally, the air in the head space of a PET bottle increases in pressure during the heat stage of the retort process which can cause distortion which does not reverse itself during subsequent cooling resulting in unacceptable container appearance. In the case of a hot fill process, the air and moisture vapor in the headspace results in a slight vacuum as the PET bottle cools which distorts portions of the sidewall. Accordingly, a dent forms in the PET bottle after the hot fill process which results in poor marketability of the PET bottle.

Therefor, for at least these two reasons, *Pasquale* does not anticipate or otherwise render obvious the subject matter of claim 1.

Rejection Under 35 U.S.C. § 103(a)

Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Pasquale* in view of *Randall* (U.S. Patent No. 5,996,882). Claim 9 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Pasquale* in view of *Fortuna* (U.S. Patent No. D279,550). Claim 10 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Pasquale* in view of *Edwards* (U.S. Patent No. D270,814). Claims 21, 23 and 24 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Pasquale* in view of *Cistone et al.* (U.S. Patent No. 5,865,345). Claim 25 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Pasquale* in view *of Cistone et al.* and *Fortuna*. Applicants respectfully traverse these rejections and request withdrawal of same.

All of the obviousness rejections are based primarily on the application of *Pasquale*. Yet, *Pasquale* does not fairly teach or suggest or even relate to a container such as that claimed as previously set forth.

Still further, each of the secondary references teach indentations or grooves mostly in the middle of each container, not a continuous curve sidewall between a bottom and an upper rim as claimed by the present invention.

Additionally, the container of the present invention is rigidly configured to withstand hot-fill and retort applications. Other known hot-fill and retort containers are configured to be deformable or include expansion members to accommodate volumetric changes of the contents

during the hot-fill or retort applications. Applicants have determined that because of the blow-molded bowl of the present invention, a rigid container without expansion members is achieved.

Applicants respectfully submit that since amended claims 1, 24 and 25 are patentable, all dependent claims therefrom are also patentable.

CONCLUSION

The Applicants respectfully request withdrawal of the rejection and believe that the claims as presented represent allowable subject matter. However, if the Examiner desires, the Applicants' attorney is ready for a telephone interview to expedite prosecution. As always, the Examiner is free to call the undersigned at 312-876-2578.

Respectfully submitted,

By its attorney,

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Date: April 17, 2003
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I hereby certify that this document and any being referred to as attached or enclosed is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, Washington, D.C. 20231, on April 17, 2003

Paula M. Theismann

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent Application of: G. Manderfield, Jr. and Ted L. Beaver	)	
Serial No.: 09/603,255	)	Examiner: N. Eloshway
Filed: June 23, 2000	)	Group Art Unit: 3727
For: MOLDABLE PLASTIC CONTAINER WITH HOURGLASS PROFILE	)	

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In The Claims

Please amend claims 1, 24 and 25 as follows:

1. (Third Amendment) A plastic molded container, comprising:

a bowl comprising an upper rim, a bottom and a sidewall extending between the upper rim and the bottom,

the sidewall comprising a lower frustum section, a narrow mid-section, and an upper frustum section, the sidewall being a continuous curve in vertical profile,

the lower frustum section connecting the bottom to the mid-section, the lower frustum section decreasing in width as the lower frustum section extends from the bottom to mid-section,

the upper frustum section connecting the upper rim to the mid-section, the upper frustum section decreasing in width as the upper frustum section extends from the upper rim to mid-section, and

the container being constructed such that it is capable of resisting permanent deformation when used in a hot fill or retort process.

24. (Second Amendment) A plastic molded container comprising:

a bowl comprising an upper rim, a bottom and sidewall extending between the upper rim and the bottom,

the sidewall comprising a lower frustum section, a narrow mid-section, and an upper frustum section, the sidewall being a continuous curve in vertical profile,

the lower frustum section connecting the bottom to the mid-section, the lower frustum section decreasing in width as the lower frustum section extends from the bottom to mid-section,

the upper frustum section connecting the upper rim to the mid-section, the upper frustum section decreasing in width as the upper frustum section extends from the upper rim to mid-section,

the container being constructed such that it is capable of resisting permanent deformation when used in a hot fill or retort process,

the sidewall being made of blow-molded materials, and the container having at least one oxygen barrier layer.

25. (Second Amendment) A plastic molded container comprising:

a bowl comprising an upper rim, a bottom and sidewall extending between the upper rim and the bottom,

the sidewall comprising a lower frustum section, a narrow mid-section, and an upper frustum section, the sidewall being a continuous curve in vertical profile,

the lower frustum section connecting the bottom to the mid-section, the lower frustum section decreasing in width as the lower frustum section extends from the bottom to mid-section,

the upper frustum section connecting the upper rim to the mid-section, the upper frustum section decreasing in width as the upper frustum section extends from the upper rim to mid-section,

the container having an overall diameter and a height, the diameter being greater than the height,

the container being constructed such that it is capable of resisting permanent deformation when used in a hot fill or retort process, and

the sidewall having a plurality of layers, at least one of which is an oxygen barrier layer.

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